

GARDNER
Appl. No. 09/806,007
January 9, 2008

AMENDMENTS TO THE DRAWINGS

The attached sheet of drawings includes changes to the drawing. This sheet, which includes the Figure, replaces the original sheet.

REMARKS/ARGUMENTS

Claims 1-4 stand allowed, with claims 5-7 objected to and claims 8 and 9 subject to restriction. Actually, claims 8 and 9 are not believed subject to new restriction requirement, but rather, it appears that the Examiner has made the previously filed PTO restriction requirement final. Applicant has amended claims 5-7 and cancelled claims 8 and 9 in the above amendment as well as offered newly written claims 11-19 for consideration. Accordingly, claims 1-7 and 11-19 remain in this application.

While Applicant previously filed a traverse of the restriction requirement, the Examiner has made the previous requirement final (page 4, first full paragraph). Accordingly, there are no further issues with respect to the restriction requirement.

On page 4, the second full paragraph, the Examiner objects to the reference to "Fig. 1" in the specification and suggests that in each instance the reference to "Fig. 1" be changed to "the figure." Applicant contacted Examiner Le and asked for any support for the requirement that the term "figure" be used in the specification and in the drawings rather than "Fig." The Examiner was unwilling or unable to identify any portion of the rules or the Manual of Patent Examining Procedure (MPEP) which suggests or mandates such correction. On January 8, 2008, Applicant also conducted a short telephone interview with the Examiner's supervisor, Georgia Epps, who indicated that she would attempt to find out and would communicate the information to the undersigned. Apparently, on January 9, even though the undersigned was unable to reach SPE Epps, Director Seidel was successful and she returned the undersigned call regarding the MPEP support. SPE Epps indicated that section 608.02(u) existed in the MPEP and mandated the identification of the figures as set out in the Official Action. During the call, the undersigned

attempted to find the alleged portion of the MPEP, i.e., section 608.02(u) and could find no such section. The undersigned pointed out to SPE Epps that there was no such section and even reviewed the PTO's online version of the MPEP pointing out that there is no such section (a copy of the printed page from the on-line PTO MPEP section is attached herewith demonstrating that there is no section between 608.02(t) and 608.02(v)). SPE Epps indicated that she would continue attempting to determine the basis for the Examiner's requirement. As of the filing of this paper, no further response has been received from the SPE Epps of the Patent Office regarding this issue.

In an abundance of caution and traversing the requirements, Applicant has amended the specification and drawing as required by the Examiner. Therefore, any further objections to the specification and the drawing is respectfully traversed.

In the first paragraph on page 5 of the Official Action, claims 5-7 are objected to as being in improper multiple dependent form. These claims have been currently amended to be in singly dependent form. As a result of the Examiner's failure to previously note this objection, Applicant is believed entitled to a full three months in which to respond by amendment.

Applicant encloses such a response in the above amendment in which claims 5-7 have been amended to be singly dependent and newly written claims 11-19 have been introduced to provide claim coverage equivalent to some of the coverage provided by original claims 5-7. Accordingly, it is requested that outstanding claims 5-7 as amended, as well as newly written claims 11-19, be examined and allowed inasmuch as they all ultimately depend from allowed claims 1-4. Entry and consideration of these claims is respectfully requested, especially since the Examiner has concluded that claims 5-7 have not ever been treated on the merits.

In the second full paragraph on page 5 of the Official Action, the Examiner correctly notes that the case is in condition for allowance except for the presence of non-elected claims 8 and 9. These claims have been cancelled without prejudice thereby obviating any further objection.

However, the Examiner's subsequent statement that Applicant has one month to cancel the noted claims or take other appropriate action and his citation of 37 CFR 1.44 as support for this shortened statutory period are simply incorrect. Since the entire application is not in condition for allowance (the Examiner's admission that "claims 5-7 have not been further treated on the merits"), this avoids the application of the *Ex parte Quayle* practice which ordinarily sets a two-month period for response. The Examiner does not indicate that claims 5-7 have to be cancelled and therefore some amendment of these claims is required.

Applicant has chosen to amend claims 5-7 to be singly dependent, but has introduced additional claims 11-19 partially covering subject matter previously covered by multiple dependent claims 5-7. Entry and consideration of these claims is respectfully requested inasmuch as the Examiner has never treated claims 5-7 on the merits. How or why the Examiner believes there to be any basis for setting a one-month or 30-day period of response to the current Official Action is not seen and is respectfully traversed.

The Examiner's indication that claims 1-4 are allowable over the prior art of record is very much appreciated. Inasmuch as remaining claims 5-7 and newly written claims 11-19 all ultimately depend from allowed claim 1, they are similarly believed to be in condition for allowance.

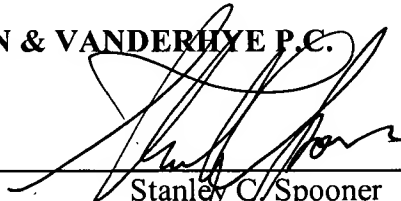
GARDNER
Appl. No. 09/806,007
January 9, 2008

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1-7 and 11-196 are all in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact applicant's undersigned representative.

Respectfully submitted,

NIXON & VANDERHYTE P.C.

By: _____


Stanley C. Spooner
Reg. No. 27,393

SCS:kmm
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100

Enclosure: Substitute Drawing
MPEP page printed from USPTO.gov website

608.02(t) Cancellation of Figures [R-2]

****>**If a drawing figure is canceled, a replacement sheet of drawings must be submitted without the figure (see 37 CFR 1.121(d)). If the canceled drawing figure was the only drawing on the sheet, then only a marked-up copy of the drawing sheet including an annotation showing that the drawing has been cancelled is required. The marked-up (annotated) copy must be clearly labeled as 'Annotated Sheet' and must be presented in the amendment or remarks section of the amendment document which explains the changes to the drawings (see 37 CFR 1.121(d)(1)). The brief description of the drawings should also be amended to reflect this change.<

608.02(v) Drawing Changes Which Require Annotated Sheets [R-2]

When changes are to be made in the drawing itself, other than mere changes in reference characters, designations of figures, or inking over lines pale and rough, ****>**a< marked-up copy of the drawing should be filed with a replacement drawing. >The marked-up copy must be clearly labeled as "Annotated Sheet." See 37 CFR 1.84(c) and 1.121(d).< Ordinarily, broken lines may be changed to full without a sketch.

Annotated sheets filed by an applicant and used for correction of the drawing will not be returned. All such annotated sheets must be in ink or permanent prints.

608.02(w) Drawing Changes Which May Be Made Without Applicant's *>Annotated Sheets< [R-2]

Where an application is ready for issue except for a slight defect in the drawing not involving change in structure, the examiner will prepare a letter to the applicant indicating the change to be made and ****>**include a marked-up copy of< the drawing >showing< the addition or alteration to be made. The marked-up copy of the drawing should be attached to the letter to the applicant >and a copy placed in the application file<.

The correction must be made at applicant's expense.

As a guide to the examiner, the following corrections are illustrative of those that may be made by ****>**an annotated sheet<:

(A) Adding two or three reference characters or exponents.

(B) Changing one or two numerals or figure ordinals. *Garrett v. Cox*, 233 F.2d 343, 346, 110 USPQ 52, 54 (CCPA 1956).

(C) Removing superfluous matter.

(D) Adding or reversing directional arrows.

(E) Changing Roman Numerals to Arabic Numerals to agree with specification.

(F) Adding section lines or brackets, where easily executed.

(G) Changing lead lines.

(H) Correcting misspelled legends.

608.02(x) ** Drawing Corrections >or Changes Accepted Unless Notified Otherwise< [R-2]

****>**Drawing corrections or changes will be entered at the time they are presented, unless applicant is notified to the contrary by the examiner in the action following the amended drawing submission.<

CORRECTION **>OR CHANGE NOT ACCEPTED<

Where the ****>**corrected or changed drawing is not accepted<, for example, because the ***>**submitted corrections or< changes are erroneous, or involve new matter or ****** do not include all necessary corrections, the >applicant will be notified and informed of any required corrective action in the next Office action. The <examiner should explicitly and clearly set forth all the reasons for not approving the corrections to the drawings in the next communication to the applicant. See MPEP § 608.02(p) for suggested form paragraphs that may be used by examiners to notify applicants of drawing corrections.